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**FEDERAL COMMUNICATIONS COMMISSION
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BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Room 222
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

**Re: MM Docket No. 95-176
Closed Captioning and Video Description**

Dear Mr. Caton:

Transmitted herewith on behalf of The Motion Picture Association of America, Inc. are an original and nine copies of its Reply Comments in response to comments on the Commission's Notice of Proposed Rulemaking in MM Docket No. 95-176 (FCC 97-4, released January 17, 1997).

Also enclosed are two copies marked "Extra Public Copy," pursuant to the Commission's March 22, 1996 Public Notice regarding proceedings implementing the Telecommunications Act of 1996.

Respectfully submitted,

Barbara K. Gardner

Barbara K. Gardner

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of

Closed Captioning and Video Description
of Video Programming

Implementation of Section 305 of the
Telecommunications Act of 1996

Video Programming Accessibility

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MM Docket No. 95-176

REPLY COMMENTS OF

THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.

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SUMMARY

MPAA agrees with the majority of the representatives of the hearing disabled community filing comments in this proceeding, and with the leading associations of program providers, that providers themselves and not program producers or owners should be responsible for compliance with the FCC's captioning rules. The arguments of others that this allocation of captioning responsibility would be unworkable are without merit. If program providers demand captioning as a condition of carriage of a particular program, it is in the program producer's own financial interest to respond affirmatively to such demand.

Because programming under contract to be captioned may, inadvertently, occasionally arrive uncaptioned, MPAA supports suggestions for a de minimis exception to the 100% post-compliance transition captioning requirement for new, non-exempt programming. To allow for unforeseen circumstances, a program provider that achieves 90% or greater compliance should be deemed to have complied with the captioning rules. Moreover, because compliance will be more difficult in the early stages of implementation, the Commission should refrain from imposing penalties on program providers if the initial percentage benchmark for captioning new programming is not achieved. Under no circumstances, moreover, should the Commission impose separate transition schedules based on program content.

Given the sheer volume of library programming in existence and the substantial costs associated with recaptioning such programming, a requirement that no more than 50% of library programming aired need be captioned at the conclusion of a fifteen-year transition period is entirely justified. The proposals of some commenters for a far shorter transition period are simply not realistic.

The Commission should not measure compliance with the captioning thresholds for either new or library programming as growth over individual program providers' current captioning

levels, as requested by some commenters. This suggestion would punish producers that have captioned the most programming, reward producers that have not, and impose an unreasonable administrative burden on the Commission. The recaptioning of previously captioned programming must count toward any applicable percentage compliance benchmark. Moreover, measuring compliance as a percentage of annual hours delivered will provide the most accurate assessment of a program provider's captioning efforts. Finally, program producers should not be required to submit compliance certifications to program providers.

There is no justification for mandating that once captioned, a program must be shown only in captioned form, as some parties urge the FCC to require. This proposal does not acknowledge that a program must often be reformatted, and hence recaptioned at considerable cost, prior to entering a new distribution stream. Nor does it acknowledge that program providers often reformat captioned programs to add local content or meet local format needs. Because MPAA is not aware of any technology that would readily permit program providers to recaption reformatted programming in-house, providers should not be required to recaption programming they reformat, if they are already in compliance with the relevant captioning threshold.

An exemption from captioning requirements for program material of fifteen minutes' duration or less is fully warranted. The suggestion that program providers should employ full-time captioning staffs in order to ensure that short-form programming is captioned is economically inefficient, impractical and should be rejected. Similarly, the proposal to permit exemptions only when captioning costs represent more than ten percent of a program's overall budget would be unworkable.

Finally, FCC-imposed standards are unnecessary to ensure captioning of the highest quality, and the FCC itself, not an industry-funded council, should resolve closed captioning complaints.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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Video Programming Accessibility)	

REPLY COMMENTS OF
THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.

The Motion Picture Association of America, Inc. ("MPAA") hereby replies to comments filed in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding (FCC 97-4 released January 17, 1997).

I. Broad-Based Support Exists For Holding Program Providers Solely Responsible For Compliance With The Commission's Closed Captioning Rules.

MPAA fully supports the comments of the majority of the representatives of the hearing disabled community that program providers, not program owners or producers, should be held responsible for compliance with the Commission's closed captioning rules. As these organizations have pointed out, program providers, as the entities that purchase video

programming, can incorporate captioning requirements in program contracts and thereby ensure that the goals of Congress are achieved.¹ Furthermore, these groups correctly recognize that placing the burden on program providers will greatly enhance the ability of both consumers and the Commission to monitor and enforce the captioning rules.² It was pointed out, for example, that it would be particularly difficult, if not impossible, to identify the producer of a program that was aired long after production where the ownership of that program has changed.³

It is significant that the National Cable Television Association (“NCTA”), as a representative of program providers, also supports the Commission’s determination to place the responsibility for captioning on program providers.⁴ Even the National Association of Broadcasters (“NAB”) concedes the reasonableness of the anticipated allocation of captioning responsibility.⁵ In light of this broad-based support among the hearing disabled community and the leading associations of program providers, it is entirely reasonable and proper to place the responsibility for captioning on such providers.

Nonetheless, several local exchange carriers and the wireless cable industry contend that program providers lack sufficient leverage over program producers to incorporate captioning

¹ Comments of the Consumer Action Network (“CAN Comments”) at 2; Comments of Association of Late-Deafened Adults, Inc. (“ALDA Comments”) at 2; Comments of the League for the Hard of Hearing (“LHH Comments”) at 3.

² Comments of the National Association of the Deaf (“NAD Comments”) at 3; LHH Comments at 3; ALDA Comments at 2; CAN Comments at 3.

³ CAN Comments at 2-3; see also ALDA Comments at 2.

⁴ NCTA Comments at 33.

⁵ NAB Comments at 3.

requirements in program contracts.⁶ Ameritech even suggests that large program producers would caption programming only in exchange for exclusive program distribution rights.⁷ These allegations are without merit. The ultimate goal of all program producers is to distribute their video product to the largest viewing audience possible. Moreover, as past industry practice demonstrates, program producers recognize the efficiency of captioning video programming at the production stage. If program providers demand captioning as a condition of carriage, it is in program producers' own financial interest to respond affirmatively to such demand.

In addition, the Satellite Broadcasting and Communications Association of America ("SBCA") argues that holding program providers responsible for compliance with the captioning rules would be inefficient because it would entail duplicative record-keeping and monitoring of program channels. However, because programmers can supply satellite program providers with closed captioning information along with other program information, the record-keeping burden on program providers will, in fact, be minimal. Similarly, the assertion that satellite operators should not be held responsible for compliance because they have no local connection to consumers should be rejected⁸ -- satellite operators clearly have a much more direct link to their customers than program producers and owners do, and therefore are in a better position to receive and act on consumer complaints.

⁶ Initial Comments of Ameritech New Media, Inc. ("Ameritech Comments") at 7-8; Comments of Bellsouth Corporation, et al. ("Bellsouth Comments") at 8; Comments of The Wireless Cable Association International, Inc. ("WCA Comments") at 7.

⁷ Ameritech Comments at 7-8.

⁸ Id. at 19.

SBCA and Cox Enterprises, Inc. (“Cox”) also seem to argue that placing responsibility for compliance on program providers would constitute an undue burden in and of itself. SBCA, for example, complains that such a requirement will force DBS operators to “perform functions ... outside their normal sphere of business operations[,] ... incur significant costs to administer a monitoring program and commit the employees necessary to maintain records and respond to complaints”⁹ Cox similarly argues that the task of monitoring compliance with the captioning rules would be prohibitively expensive and unworkable.¹⁰ Yet, it is DBS service providers, cable system operators and broadcast stations, not program owners, that select, contract for, schedule, and transmit programming to viewers and customers. A given program owner is responsible for only a portion of each provider’s total programmatic offerings, and even when that portion is supplied with captions, the program owner has no control over whether the captioning is actually transmitted to the program provider’s viewers.

Cox also claims that program providers would be unable to enforce contractual captioning requirements.¹¹ Contrary to this assertion, however, allowing the program contract negotiation process to allocate responsibility for compliance with Commission rules has been broadly successful in the children’s television context. There, individual broadcast licensees and cable television operators are held responsible for compliance, but frequently shift the burden for this responsibility by requiring program providers to certify that the video programming they supply

⁹ SBCA Comments at 17. Apparently, SBCA’s primary objection is to DBS’ status as a regulated service.

¹⁰ Cox Comments at 6-10.

¹¹ Id. at 9-10.

complies with the Commission's commercialization rules. Cox has provided no evidence that such a system would not be as effective in administering enforcement of the closed captioning rules.

Several commenters also objected to placing the captioning responsibility on program providers on the grounds that it would be uneconomical and inefficient to require such entities to actually caption all video programming.¹² Although MPAA agrees that requiring each program provider to separately caption the programming it receives from program producers would be grossly inefficient, this concern is misplaced, because the Commission never contemplated such a result. Indeed, as the above discussion demonstrates, video programming producers themselves will caption the programming if required to do so by the relevant program contract.

The Commission should recognize, however, that the final provider of a video program cannot always control whether captions have been supplied.¹³ Although a program provider may contract for the requisite amount of captioned programming, it nevertheless would be unable to satisfy the Commission's post-transition captioning threshold if program producers failed to supply captions as required by their contracts. Because it is not unusual to receive video programs shortly before their scheduled presentation, program providers may not have sufficient

¹² NAB Comments at 2-3. See generally WCA Comments at 8; Bellsouth Comments at 11.

¹³ See, e.g., NCTA Comments at 12-13; Comments of E! Entertainment Television, Inc. at 6-7; Comments of Encore Media Corporation at 8; HBO Comments at 9-12.

time to substitute a captioned program for an uncaptioned program.¹⁴ To accommodate for these and other unforeseen circumstances, the Commission should build into the captioning rules a de minimis exception to its final (100%) transition benchmark. MPAA assumes that unforeseen instances when uncaptioned product is aired should not occur more than 10% of the time; therefore, program providers should be deemed in compliance if they achieve a 90% or greater, rather than 100%, compliance rate for the captioning of all new, non-exempt programming at the end of the transition period, as generally suggested by several commenters.¹⁵ In this way, a program provider that contracts for the requisite amount of captioned programming will not be adversely affected by the failure of a program producer to meet its contractual obligations in limited cases.

It is also clear that program producers should not be jointly responsible with program providers for compliance with the captioning rules. As the League for the Hard of Hearing points out, enforcement would be more effective if ultimate responsibility for captioning were placed on one entity -- program providers.¹⁶ Moreover, MPAA shares the concerns raised by others that it would be difficult for the Commission to sanction non-licensed entities,¹⁷ and that extending Commission jurisdiction to program owners and producers would constitute a “dramatic

¹⁴ NAB Comments at 2-3; NCTA Comments at 12-13.

¹⁵ See, e.g., NCTA Comments at 13 & n.27.

¹⁶ See LHH Comments at 3.

¹⁷ Comments of Encore Media Corporation at 7.

expansion of Commission authority”¹⁸ Finally, as C-SPAN explained, extending Commission jurisdiction to program owners and producers could infringe upon constitutional protections related to the content of speech produced.¹⁹ For these reasons, as well as those set forth in MPAA’s initial comments,²⁰ program providers alone should be held responsible for compliance with the Commission’s captioning rules.

II. The Commission Should Incorporate Greater Flexibility Into Its Captioning Transition Schedule For New Programming.

MPAA argued in its initial comments that program providers should be permitted ten years to reach the Commission’s ultimate captioning compliance benchmark of 100% for new, non-exempt video programming.²¹ As explained above, however,²² it would be inequitable to penalize a program provider for de minimis non-compliance with this post-transition captioning threshold caused by a program producer’s failure to satisfy its contractual obligation to supply captioned programming, or by other unforeseen circumstances. Therefore, a program provider that achieves a 90% or greater captioning rate for new, non-exempt programming at the end of the transition period should be deemed to be in compliance with the captioning rules.

¹⁸ Comments of the National Cable Satellite Corporation (“C-SPAN Comments”) at 7.

¹⁹ Id. at 6-8.

²⁰ MPAA Comments at 2-6.

²¹ Id. at 6-10.

²² See supra at 5-6.

The Commission also should avoid imposing an inflexible percentage compliance benchmark for the first implementation phase of the captioning rules. As with all new regulatory programs, compliance will be significantly more difficult in the initial stages.²³ Moreover, program providers have already established program budgets for fiscal year 1997 (and even 1998), and anticipated costs for compliance with the Commission's captioning rules have not been incorporated into those budgets.²⁴ Rather than impose penalties if strict compliance with the initial percentage benchmark is not achieved, the Commission should attempt to determine at that time whether unanticipated impediments to captioning exist.

Finally, the League for the Hard of Hearing has suggested that the Commission adopt separate transition schedules based on program content (i.e., accelerated schedules for educational and public affairs programming).²⁵ Because the imposition of separate regulatory standards based on speech content is highly suspect and may infringe on the First Amendment rights of program producers and providers, the Commission should reject this proposal and adopt a single transition schedule for all new, non-exempt video programming, regardless of content.

III. The Captioning Requirements Applicable To Library Programming Must Reflect Industry Realities.

MPAA believes that voluntary efforts by program producers, as influenced by enhanced demand for captioned programming, will adequately ensure that a sufficient quantity of library

²³ See Comments of the A&E Television Networks, The History Channel and Ovation ("A&E Comments") at 21.

²⁴ NCTA Comments at 11.

²⁵ LHH Comments at 4.

product is captioned. However, if the Commission elects to mandate the captioning of such programming, MPAA has demonstrated that the sheer volume of library product in existence, combined with the significant costs associated with reformatting, and hence recaptioning, such programs, justify a requirement that at the conclusion of a fifteen-year transition period for implementation, no more than 50% of library programming aired need be captioned.²⁶ The proposals of some commenters for a far shorter transition schedule for library programming are simply not realistic.²⁷

MPAA also urged that ten years after the date of first distribution, a “new” program should be deemed to constitute library product, and therefore subject to less stringent captioning requirements.²⁸ We note that Home Box Office also addressed the need to recognize that today’s new program should be treated as library product in re-run.²⁹ Similarly, MPAA supports the proposal that all programs first exhibited without captions during the Commission’s phase-in period for new programming should be deemed to constitute library programming.³⁰

²⁶ MPAA Comments at 14-16.

²⁷ See, e.g., ALDA Comments at 4 (recommending a two- to three-year phase-in period for such programming).

²⁸ MPAA Comments at 13.

²⁹ HBO Comments at 16.

³⁰ See Comments of NAB at 10-11.

IV. Compliance With The Captioning Requirements Should Be Measured On An Annual Basis Without Using Current Captioning Levels As A Baseline, Without Requiring Certifications From Program Owners, And Without Excluding Recaptioned Programming From The Compliance Determination.

The Commission should not adopt the suggestion that compliance with captioning thresholds be measured as growth over individual program providers' current captioning levels.³¹ Although program producers have no intention of decreasing their current captioning efforts, using current captioning levels as a benchmark would unfairly punish those producers that have captioned the most programming to date, and economically reward those that have not. Moreover, the administrative costs and burdens of this proposal would be staggering: the Commission would be forced to ascertain at the outset the amount of captioned programming that each provider broadcasts, and would have to apply separate transition schedules for each such provider. Ease of administration alone counsels against the adoption of this proposal.

In addition, many commenters agreed with MPAA that calculating compliance with the relevant percentage threshold for new and library programming as a percentage of annual hours of non-exempt programming delivered by a program provider would provide a more accurate assessment of that provider's efforts than measurements based on any other calculation. Annual measurements reflect the fact that programs are usually purchased for a season, or longer.³² However, MPAA recognizes the concerns raised by NAB that one-year compliance measurements would impose substantial record-keeping burdens on program providers.

³¹ See, e.g., ALDA Comments at 3.

³² A&E Comments at 20.

Therefore, MPAA suggests that the Commission adopt reporting requirements analogous to those for children's educational and informational television programming, whereby program providers are required to complete quarterly reports that quantitatively document their qualifying children's programming, but overall compliance is measured over a longer period.³³ Under MPAA's suggested approach for closed captioning, program providers would complete quarterly reports certifying compliance with the captioning requirements, but the Commission would measure such compliance on an annual basis.

However, under no circumstances should program producers be required by the Commission to submit compliance certifications to program providers, as suggested by some commenters.³⁴ The provision of captioned product will be a contractual matter between the program producer and provider, and that contract will be sufficient evidence of both the program producer's obligations, and the provider's compliance efforts.

Similarly, the Commission should reject the argument that reformatted and recaptioned programming should not count toward any applicable percentage benchmark for compliance. This assertion is based on the entirely erroneous assumption that the costs associated with recaptioning previously captioned programming are "minimal."³⁵ Indeed, as MPAA points out below, recaptioning costs are quite substantial and will inevitably increase over time. The effort

³³ See 47 C.F.R. §§ 73.671 Note 2, 72.3526(a)(8)(iii).

³⁴ Comments of SBC Communications, Inc. et al. at 5.

³⁵ See ALDA Comments at 3.

to recaption reformatted programming therefore must be given full credit when assessing a program provider's compliance with the relevant captioning threshold.³⁶

V. There Is No Justification For Requiring That Once Captioned, A Program Must Subsequently Be Transmitted Only In Captioned Form.

Several parties argue that once a program has been captioned, it may only be exhibited thereafter in captioned form.³⁷ This request ignores two realities of the video marketplace.

First, the proposal assumes that once captioned, a program is forever captioned; it does not acknowledge that frequently, a program must be reformatted prior to entering a new distribution stream, and that a captioned program must be recaptioned, at considerable cost, every time that program is reformatted. Thus, a movie initially captioned for home video, or television programs captioned for first run syndication or network distribution, must be recaptioned for virtually every successive distribution stream, including broadcast syndication and cable network exhibition; in part, this is required to accommodate the different commercial content and/or timing requirements of different exhibition venues. Even within the same program format, editing for content or language may vary according to the intended audience for the program. And each time a program is re-edited, compressed, expanded, or when the text of the audio portion of the

³⁶ Equally flawed is Bellsouth's request that the Commission measure compliance as a percentage of programs produced as opposed to programs actually aired. Bellsouth Comments at 15. Although this assertion is premised on the erroneous assumption that program producers should be held responsible for compliance with the Commission's captioning rules, it is nevertheless an illogical proposition. The principal purpose of the closed captioning rules is to increase the percentage of programming actually aired that contains captions. Including programs that have not even been released to the public in the compliance determination would serve no purpose.

³⁷ ALDA Comments at 4; CAN Comments at 10.

program is changed, recaptioning is required. It is therefore clear that repeated captionings will occur over the life of each video program.

Moreover, the costs associated with recaptioning are significant. As MPAA has demonstrated in its initial comments, the average cost of recaptioning is approximately one-half the cost of the original captioning, plus the cost of creating new encoded masters, physically transporting the tape or retransmitting the recaptioned programming by satellite, creating a copy of the dubbing master or an off-line cassette, and reshipping the dubbing master back to the program provider.³⁸ The cost to recaption a single episode of a one-hour television program frequently can exceed \$3,000, while the costs of recaptioning and distributing an entire 120-episode television series are close to \$500,000.³⁹

Second, commenters do not realize the obstacles that would be faced by program providers should they be required to recaption programming they reformat (e.g., to add local content or meet other local requirements).⁴⁰ Prerecorded programming may be delivered just hours before air time, barely in time to reformat it as needed for local airing, yet recaptioning usually requires sending the programming off-site for days at a time. Forcing a program provider to recaption programming under such circumstances is unwarranted when that provider already is in compliance with the relevant percentage threshold requirement.

³⁸ See MPAA Comments at 8 & Attachment.

³⁹ Id.

⁴⁰ See, e.g., ALDA Comments at 3-4; LHH Comments at 5; CAN Comments at 10. Several caption providers support this proposal as well. However, caption providers have a vested interest in seeing the maximum amount of programming captioned as possible.

In this regard, MPAA is not aware of any technology currently available that would generally permit program providers to recaption reformatted programming in-house.⁴¹ Even new technologies still appear to require significant inputs of time and labor to reformat and recaption previously captioned works. In a very limited number of circumstances (where the program length is only slightly compressed or expanded), program providers can commensurately “vari-speed” (i.e., expand or contract) the existing captions. However, any reformatting involving re-editing of the program or other format changes of a more complicated nature will necessitate the insertion of costly new captions -- a capacity that program providers do not have, and will not have in the foreseeable future. The Commission may wish to revisit this issue, however, if and when captioning technology advances to such a degree that program providers are capable of recaptioning all video programming as they edit it in-house.⁴²

VI. Additional Conditions And Restrictions On Exemptions To The Captioning Requirement Are Not Justified.

MPAA disagrees with NAD’s contention that an exemption for interstitials and promotional advertisements is not warranted. While NAD concedes that there often is insufficient time to caption such programming, it argues that program providers could overcome these time

⁴¹ See Comments of Kaleidoscope Television at 5.

⁴² Indeed, MPAA’s initial comments urged the Commission to revisit its transition schedule whenever technical advances render that schedule either unworkable or obsolete. MPAA Comments at 11-12.

constraints by employing in-house captioners.⁴³ This is not a realistic solution. For example, promotional advertisements often originate at an outside contractor's production facility and are distributed throughout the day and night to networks, individual broadcast stations and cable systems. If this proposal were adopted, each network, station and cable system that receives such programming would have to employ a sizable captioning staff available at the origination point of the entity's transmissions twenty-four hours a day to caption this material in time for airing. Moreover, to handle this workload, each such entity might have to employ a number of highly compensated professional captioners. The cost to each program provider in terms of salaries and equipment would far outweigh the value of the underlying programming. Furthermore, requiring each provider to maintain at a constant state of readiness a significant captioning staff would be grossly inefficient. Because program providers rarely receive promotional advertisements according to a pre-arranged schedule, there may be long periods during the day when captioning staff would sit idle. Under any cost/benefit analysis, an exemption for interstitials -- indeed, for all short-form program material fifteen minutes or less in duration -- is warranted.

Similarly, the proposal to grant an exemption for a program only when captioning costs represent more than ten percent of that program's overall budget is unwarranted.⁴⁴ Not only would this proposal be unworkable, there is no justification for requiring the submission of program budgets to the Commission for inspection.

⁴³ NAD Comments at 15.

⁴⁴ Kaleidoscope Comments at 8, 17.

VII. Commission-Imposed Standards Are Unnecessary To Ensure Captioning Of The Highest Quality, But The Commission Itself, Not An Outside Council, Should Resolve Captioning Complaints.

MPAA recognizes that the hearing disabled community deserves to be supplied with the highest quality captioning available, but disagrees that Commission-mandated quality control standards are necessary to achieve that goal. As MPAA noted in its initial comments, marketplace forces and the proposed complaint-based enforcement mechanism will provide program providers a strong incentive to supply the highest-quality captioning possible.⁴⁵

Absent any government regulation whatsoever, the captioning industry is becoming increasingly competitive, as evidenced by growing price competition, and the captioning rules will inevitably accelerate this process. Thus, captioners will be forced to provide the best captioned product in order to remain competitive. Furthermore, adequate controls already exist to ensure that video programming is captioned correctly. If program producers or providers discover captioning errors in pre-recorded programming, that programming is usually returned to the captioner for correction before it is aired. With respect to live programming, contracts can contain quality control standards, and those captioners that have provided poor quality service will find that their contracts are not renewed, or in extreme cases will incur penalties for breach of contract. Therefore, there is no need for Commission intervention.

Furthermore, as any observer of video programming recognizes, program dialogue does not always adhere to precise grammatical rules, but rather imitates the free-flowing and spontaneous character of normal conversation; indeed, non-grammatical dialogue is frequently a

⁴⁵ MPAA Comments at 22.

deliberate artistic choice. For the Commission to enforce standards for the accuracy and quality of captioning other than through a complaint-drive process could necessitate regular reviews of programs and program scripts for video programming. Rather than undertake this considerable administrative burden, it would be far more efficient and effective for the Commission to allow marketplace forces and a complaint-driven enforcement process to accomplish this goal.

However, the Commission itself should enforce those captioning rules it does adopt: it should not mandate the creation of an industry-funded council for the purpose of resolving closed captioning complaints as some commenters propose.⁴⁶ Even assuming it has authority to do so,⁴⁷ the Commission should not undertake such unwarranted action. Implementation of the commenters' proposal would tend to create confusion among viewers, program providers, and program owners as to the council's regulatory authority vis-a-vis that of the FCC; cause delay in the resolution of complaints, since a de facto two-stage complaint process would likely evolve; and offer few countervailing benefits. The proposal should be rejected.

VIII. Conclusion

To best achieve the goal of increasing the availability of closed captioned video programming to the American public, the Commission must take into consideration the realities of the video distribution marketplace in formulating its closed captioning rules. For the foregoing

⁴⁶ See CAN Comments at 19; ALDA Comments at 11; NAD Comments at 29-30.

⁴⁷ Section 713(h) of the Communications Act of 1934, "Private Rights of Actions Prohibited," expressly provides that the Commission "shall have exclusive jurisdiction with respect to any complaint under this section." 47 U.S.C. §613(h) (emphasis added).

reason, MPAA respectfully requests that the suggestions and recommendations contained herein and in its initial comments be adopted.

Respectfully submitted,

THE MOTION PICTURE ASSOCIATION
OF AMERICA, INC.

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March 31, 1997

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